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July 30, 2004

VIA ELECTRONIC FILING

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, DC 20554

Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling  
Card Service, WC Docket No. 03-133

Dear Ms. Dortch:

Attached please find a letter sent to Chairman Michael Powell on behalf SBC Communications, Inc. (SBC) in response to a recent *ex parte* filed by a DoD official regarding AT&T's above-referenced prepaid calling card petition.

On behalf of SBC Communications, Inc. one electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with the Commission's rules.

Sincerely,

/s/  
Christopher M. Heimann

Attachment

**Paul K. Mancini**  
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July 30, 2004

VIA ELECTRONIC MAIL

Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling  
Card Service, WC Docket No. 03-133

Dear Chairman Powell:

On behalf of SBC Communications Inc. (SBC), I am writing to respond to a recent *ex parte* filed by a Department of Defense (DoD) official regarding AT&T's above-referenced prepaid calling card petition.<sup>1</sup> Without offering an opinion on the merits of AT&T's petition, the DoD official states that AT&T is the "sole supplier of prepaid calling cards that are sold in Armed Services exchanges" and expresses concern that military personnel will face increased financial burdens if AT&T raises its prices for these calling cards. According to press reports, the Commission has responded to this DoD letter by withdrawing from circulation an order that would presumably have denied AT&T's petition.<sup>2</sup> The Commission should immediately deny the AT&T petition because it is legally indefensible and it would perpetuate a scam.

Like all Americans, SBC fully supports and is sympathetic to the needs of our armed forces and their families, which makes AT&T's blatant attempt to use the welfare of our armed forces and their families to achieve its illegal and improper regulatory objectives even more outrageous and despicable. The Commission should immediately deny AT&T's petition and make clear to AT&T and other prepaid calling card providers that the Commission is serious about enforcing its rules. Failure to deny AT&T's petition only encourages other calling card providers to engage in similar unlawful behavior, putting the affordability of local telephone service for all Americans in even greater jeopardy.

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<sup>1</sup> Letter from Charles S. Abell, DoD, to Michael Powell, FCC, WC Docket No. 03-133 (July 23, 2004).

<sup>2</sup> *Communications Daily*, Wireline, July 28, 2004

***AT&T's Exclusive Contract with DoD Should be Examined***

The proper response to DoD's concern about AT&T's threat to raise the price of its prepaid calling card services sold to military personnel is not to acquiesce in AT&T's unlawful behavior. Rather than imploring the FCC to aid AT&T's unethical and illegal acts, DoD should hold AT&T to the terms of its procurement contract and/or launch an investigation into whether the representations AT&T made in bidding on that contract, or AT&T's performance under that contract, violate federal laws and regulations. Indeed, DoD would be establishing a dangerous precedent if it awarded contracts to suppliers that offer lower prices solely by virtue of their ability to violate federal rules without fear of being caught and punished.

Allowing AT&T to now threaten to raise prepaid calling card rates used by military personnel, including those serving in Iraq and Afghanistan, because it willfully did not include required universal service payments or proper access charges in its bid to DoD, would be equivalent to allowing a winning DoD contractor to raise the rates paid by the DoD because it consciously did not include required payments for federal and state income taxes, excise taxes, social security or Medicare costs, or minimum wages in its winning bid. Certainly, no government agency would ever consider allowing such a patently illegal and unethical act, and it is inexplicable why the FCC or DoD would even consider allowing AT&T to get away with this comparable ploy.

On the other hand, to the extent that AT&T, in fact, did include these costs in its bid and successfully avoids them due to the Commission's inaction, then AT&T will have improperly increased its profit margin on this DoD contract to the detriment of the DoD, our armed forces and their families. Moreover, it should also be emphasized that since the AT&T petition does not directly deal with international or interstate calls, its attempts to use troops stationed in Iraq and Afghanistan as political props in its disingenuous lobbying efforts is beyond irresponsible.

***AT&T's Threat to Raise Prepaid Calling Card Rates on our Armed Forces Masks its Dodging of USF Payments***

It is simply unconscionable that AT&T is now threatening to raise prepaid calling card rates used by military personnel in combat zones because it wants to avoid following rules and requirements that have been in existence for decades. In its petition, AT&T claims that for universal service payment purposes its prepaid calling card service is not a telecommunications service, but rather is an enhanced information service, and, hence, it does not need to make universal service payments for such calls.<sup>3</sup> AT&T bases this claim on the fact that when a customer uses the prepaid calling card service, he or she is subjected to a brief, pre-recorded advertising message from AT&T or one of its corporate partners before the call is completed to the called party. According to AT&T, this advertisement transforms an otherwise ordinary telecommunications service into an enhanced service which is not subject to universal service or access charge payments.

Amazingly, on the other hand, for access charge purposes, AT&T claims that its prepaid calls are not enhanced information services or intrastate telecommunications, but rather they are interstate

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<sup>3</sup> AT&T Petition at 18.

telecommunications services, even though the calls originate and terminate within the same state. As a result, AT&T claims that it should pay local phone companies the lower rates for interstate calls rather than higher intrastate access charges, even though the calls start and stop within the same state. AT&T takes this absurd and conflicting position claiming that, because the advertisement is produced by a calling card "platform" that is typically located in a different state than the calling party, the service actually consists of two separate interstate communications -- one from the calling party to the calling card platform and another from the platform to the called party.<sup>4</sup>

According to its petition, AT&T has unilaterally and without FCC approval stopped paying intrastate access charges under the theory that its prepaid calling card service is purely interstate. In addition, AT&T also stopped making contributions to the federal universal service fund since 1999 under the inconsistent theory that its service is an enhanced service, rather than a telecommunications service. Based on these disingenuous and conflicting arguments, AT&T has reluctantly admitted in a recent SEC filing to avoiding at least \$215 million in access charge payments and \$140 million in federal universal service payments.<sup>5</sup> These amounts are increasing every minute.

***If the Commission Fails to Act, Providers That Play by the Rules Likely will  
Seek a Refund of their USF Payments or Copy AT&T's Charade***

AT&T's arguments regarding the jurisdiction and classification of its prepaid calling card service are in direct conflict with Commission precedent stretching back more than a decade, and numerous parties in this docket have thoroughly discredited AT&T's claims. As these parties point out in great detail, the Commission has rejected attempts to divide a single communication into multiple communications based on intermediate points of switching.<sup>6</sup> Thus, contrary to AT&T's claims, routing a prepaid calling card call through an out-of-state switching platform does not transform an otherwise intrastate call into two interstate calls. Similarly, the mere addition of a pre-recorded advertisement to an otherwise standard telecommunications service does not transform that service into an enhanced service.<sup>7</sup> Indeed, if such advertisements did have the effect claimed by AT&T and turned telecommunications services into information services, the entire telecommunications industry, including SBC, could completely deregulate itself, stop making universal service payments and stop paying all access charges by simply adding these advertisements to every telecommunications service they offer. Such a result would clearly be a scam and is entirely

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<sup>4</sup> AT&T Petition at 9.

<sup>5</sup> AT&T Form 10-Q (filed with the Securities and Exchange Commission, May 10, 2004).

<sup>6</sup> Letter from Ann Rakestraw, Assistant General Counsel, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, Docket No. 03-133 (July 15, 2004); Letters from Lisa R. Youngers, Federal Regulatory Attorney, General Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 03-133 (June 23, 2004, February 26, 2004, and July 23, 2004); Letters from Walter B. McCormick, Jr., President and Chief Executive Officer, United States Telecom Association, to Michael K. Powell, Kathleen Abernathy, Jonathan Adelstein, Michael Copps, Kevin Martin, Federal Communications Commission, CC Docket No. 03-133 (July 23, 2004 and July 28, 2004). *See also Southwestern Bell Telephone Company*, CC Docket No. 88-180, Order Designating Issues for Investigation, 3 FCC Rcd 2339 ¶¶ 25-28 (1988) (citing judicial precedents); *Time Machine Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186 ¶ 30 (1995) (*Time Machine Inc.*).

<sup>7</sup> *See Time Machine Inc.* ¶ 39.

inconsistent with the Communications Act and Commission rules, and demonstrates the absurdity of AT&T's arguments.

As SBC and others have demonstrated, AT&T's prepaid calling card petition not only is patently frivolous, it would completely eviscerate the existing access charge and universal service funding regime on which local carriers rely to provide affordable local phone service in high-cost areas and to lower income and disadvantaged customers across the country. The Commission should not tolerate AT&T's blatant attempt to engage in self-help and avoid its financial obligations under the universal service and access charge systems that were established decades ago by the FCC. Doing so will only suggest to others who compete with AT&T in the prepaid calling card market that it is an acceptable strategy to illegally stop paying into the universal service fund and to cheat local phone companies out of appropriate access charges, and that the Commission will look the other way. At some point, even law abiding competitors may need to seek refunds in order to compete with AT&T.<sup>8</sup>

The Commission simply cannot bury its head in the sand. Rather, it must do what the law and sound public policy demand: promptly deny AT&T's petition. The Commission has already shown itself willing to stand up to AT&T's misleading and self-serving withering public assaults when it rejected its VOIP "somewhere in the middle" access avoidance scheme earlier this year. The Commission must show that same leadership now.

Accordingly, SBC strongly urges both the Commission and DoD to take a firm stand against AT&T's unlawful prepaid calling card scheme and send a clear message that neither agency will tolerate the violation of federal laws and regulations, or AT&T improperly raising prepaid calling card rates paid by military personnel when it is made to live up to all of its obligations.

Sincerely,

/s/

Paul K. Mancini

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
William Maher  
Charles S. Abell

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<sup>8</sup> See, e.g., Letter from Richard Juhnke, Sprint, to Christy Doleshal, USAC (May 27, 2003) (stating that, in the event AT&T's petition is granted, Sprint will request a refund of all universal service contributions related to its prepaid card revenues, and Sprint PCS will seek a refund for all its contributions, going back to January 1, 1998).